

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HOLLI WRICE,

Defendant.

Case No. 10-cr-40065-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant's Motion for Sentencing Review/2255 Habeas Relief (Doc. 106). However, Defendant's Motion is not properly titled as such and was directed to chambers instead of properly filed with the Court. The Court believes, however, that Wrice intends to invoke 28 U.S.C. § 2255 because the relief she seeks is only available through such a motion.

However, the Court is hesitant to construe this as a § 2255 motion without a clear indication that Wrice intends to invoke that statute. "[T]he court cannot so recharacterize a pro se litigant's motion as the litigant's first § 2255 motion unless the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law's 'second or successive' restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing." *Castro v. United States*, 540 U.S. 375, 377 (2003).

Therefore, the Court **WARNS** Defendant Wrice that if she does not file a motion to withdraw her pending motion (Doc. 106) on or before **February 9, 2015**, the Court will construe

it as a § 2255 motion and Wrice will then be subject to the second or successive filing requirements contained in 28 U.S.C. § 2255, ¶ 8.

The Court further **WARNS** Defendant Wrice that the time for filing a 28 U.S.C. § 2255 Petition has lapsed and as previous stated, this Court has no record of any filings by the Defendant in July of 2012.

Finally, the Court **CAUTIONS** the Defendant to ensure all Motions are properly filed with the Court and that the Court will not accept future correspondence and/or motion directed to Chambers.

IT IS SO ORDERED.

DATED: 1/8/2015

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE